

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Creation of A Low Power Radio Service	)	MM Docket No. 99-25
	)	
Amendment of Service and Eligibility Rules for	)	MB Docket No. 07-172
FM Broadcast Translator Stations	)	RM-11338

TO: Marlene H. Dortch, Secretary  
Federal Communications Commission  
ATTN: The Commission

**REPLY COMMENTS OF CSN INTERNATIONAL**

CSN International ("CSN"), by its attorney, hereby respectfully submits the following Reply Comments in this proceeding.

1. The National Association of Broadcasters ("NAB"), has filed Comments in this proceeding. No organization is better qualified than the NAB to understand and elucidate the consensus thinking of the broadcasting industry. In this instance, the NAB is right on target. We support and endorse their Comments.

2. Unfortunately, a number of other commenters have suggested drastic changes in the LPFM allocations rules. They suggest that the rules be changed to allocate LPFM stations on the basis of a protected contour concept, as opposed to the distance spacings method, which is currently used. These suggestions should be firmly rejected.

3. First of all, they go far beyond the scope of the Third NPRM and would, therefore, require the issuance of a new NPRM. More importantly, however, they would make it impossible for translator applicants to predict and protect new LPFM allotments.

4. As we showed in our initial Comments, it is currently possible to accurately predict the locations of new LPFM stations. That predictability makes it possible for translator applicants to protect these new allotments. The wholesale change in the LPFM rules proposed by some commenters would destroy that predictability and make it impossible to harmonize the objectives of the LCRA with the need to clean up the current translator backlog.

5. In the years following WWII, the FCC allocated numerous AM stations with little regard for interference. As a result, the AM band became hopelessly cluttered and on May 10, 1962, the Commission was obliged to take drastic action. It imposed a freeze on the processing of all applications for new AM stations, while it considered new rules to deal with the problem. *Freeze on Standard Broadcast Applications, In the Matter of Interim Criteria to Govern Acceptance of Standard Broadcast Applications*, 23 Pike & Fischer RR 1545 (The Commission 1962). See Exhibit A, attached. The opening of the FM band to thousands of new very low powered stations as proposed by some commenters would open the door to a similar degradation of the FM band with some of the same consequences.

6. The Commission should be focusing first on the need to clean up the translator backlog. That needs to be done before an LPFM window can be opened. Cleaning up the backlog requires that it be cut down to a manageable size. We have suggested a way to do that, namely the imposition of a cap on the number of applications filed by any one entity in the window, by the opening of a settlement window, and by processing the remaining translator

applications which can be shown not to preclude any new LPFM allotments. We reiterate that suggestion.

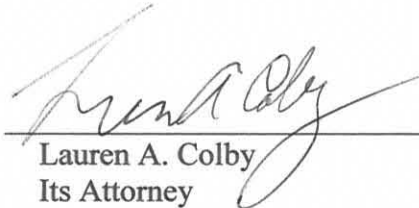
September 21, 2011

Law Office of  
LAUREN A. COLBY  
10 E. Fourth Street  
P.O. Box 113  
Frederick, MD 21701  
(301) 663-1086

Respectfully submitted,

CSN INTERNATIONAL

By:

  
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Lauren A. Colby  
Its Attorney

**EXHIBIT A**



In the Matter of )  
 )  
Interim Criteria to )  
Govern Acceptance of )  
Standard Broadcast Applications )

[¶51:354, ¶53:24, ¶53:28] Freeze on acceptance of  
standard broadcast applications.

Restrictions are placed on the acceptance of new applications for standard broadcast facilities pending consideration, in rule-making proceedings to be instituted, of basic issues as to assignment of such facilities.

#### REPORT AND ORDER

By the Commission: (Commissioner Hyde dissenting and issuing a statement).

1. The present rules governing assignment of standard broadcast facilities are virtually unchanged from those adopted two decades ago. Between 1945 and 1962, the number of authorized standard broadcast stations has grown from 955 to 3,871, and the fact of this tremendous growth coupled with the particular way in which the growth has occurred, has created problems which differ greatly from those anticipated when the present standard broadcast rules were adopted. As explained more fully in the paragraphs which follow, the Commission believes that an immediate need exists to examine the problems of standard broadcast assignment in fresh perspective. We believe that the time has come to re-study the standards under which we consider new and changed assignments and, as a first step toward this end, we find it necessary to bring a temporary, partial halt to our acceptance of applications for new and changed facilities.

2. To understand the difficulties we face today, it is necessary to refer, briefly, to the evolution of the standard broadcast service as it has developed since the Second World War. Pre-war radio service suffered from what the Commission recognized to be three principal deficiencies: lack of any local outlet in many communities of substantial size, absence of competing local stations in communities that did have a facility, and substantial "white" areas in the Northeast, Midwest, South, and Far West. Accordingly, the goals the Commission sought to achieve in bringing about the post-war growth of radio were specifically directed toward fulfillment of these three needs. It was always recognized that, to some degree, providing local outlets and fostering competition were objectives inconsistent with the Commission's third aim, that of eradicating "white" areas, but, it was felt that a case-to-case balancing of the competing considerations would result in an assignment scheme reflecting relatively equal achievement in each area.

3. The hope for balanced achievement has not, however, been realized in fact. The standard broadcast service has grown so as to fulfill the Commission's first two objectives to an unexpected degree. A large majority of



communities <sup>1/</sup> of 10,000 and over (and many with a population of under 10,000) have their own local outlets. There are few counties in the United States which do not have a choice of multiple signals. Multi-station communities have grown similarly, so that lack of competition in the standard broadcast band can no longer be regarded as a serious problem. At the same time, this tremendous proliferation of stations has occurred without significant reduction of "white" areas. The outlying areas which lacked primary service in 1946 have been reduced only a minute degree by the continual flow of new assignments. More than this, concentration upon the creation of multi-station markets has led to a derogation of engineering standards, so that service rendered by existing stations in the outermost regions of their normally protected service areas has been impaired, future power increases to extend the interference-free contour over growing suburban populations are often rendered impossible, and the available channels for the establishment of new stations in growing under-served areas have been continually reduced in number.

4. In the face of this mounting problem, it becomes necessary to ask ourselves whether the present rules governing assignment of new and changed facilities, and the substantial body of precedent which has become intertwined with many of the rules, frustrate implementation of a more efficient pattern of station assignment. Properly, this question forms the core of the thorough reappraisal of the Standard Broadcast Rules which must become the subject of formal rule-making proceedings. It is possible at this time, however, to delineate at least two areas of major concern.

5. First, certain of the technical rules, entirely adequate when adopted, have lost their practical validity as the number of stations has grown. For example, presently employed RSS exclusion principles for calculating nighttime interference, which are effective if only a few stations enter the RSS limit, become progressively less precise as the number of interfering sources is increased. Again, levels of signal intensity required for residential and business areas of a particular community were predicated upon maintenance of a normally protected contour some distance from the center of the city served. When this contour is not maintained, it may no longer be said with certainty that the signal level required for city service is adequate to insure a sufficient signal under all conditions.

6. Second, and of greater importance, is the fact that, owing to intense concentration upon providing local outlets and competitive services, many of the most crucial standards have been impaired by built-in exceptions and by waivers. The two prime examples of this phenomenon are the rules most basically involved in the steady deterioration of the protected service area concept, i.e., the rules concerning interference which may be caused and which may be received by an applicant for new or changed facilities. Section 3.24(b) of the Rules provides that a new facility must not cause interference to existing stations unless the need for the new service outweighs the need for the service to be lost. Unfortunately, neither of the factors to be weighed

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<sup>1/</sup> Suburban communities within standard metropolitan statistical areas are not considered separate communities for the purpose of this analysis.



takes into consideration, except most indirectly, the values inherent in maintaining what is ordinarily considered to be an adequate separation between stations. Since, most often in an individual case, a proposed new station will provide a new service to a considerably greater number of persons than reside in the area of interference, interference to existing stations, unless extraordinary in amount, has not been a major factor leading to denial of applications. The rule concerning interference received by a proposed operation has more directly involved a weighing of engineering considerations against non-engineering factors, again to the detriment of the former. Section 3.28(d)(3) provides that a proposed facility may receive no more than ten per cent population loss by reason of interference within its normally protected contour. However, §3.28(d)(3) contains several significant exceptions which have permitted numerous grants of proposals receiving interference far in excess of ten per cent. Beyond the exceptions, an ever-increasing number of non-engineering factors has been found to justify waiver of the Rule in individual cases, each of which has been added to the body of precedent that inextricably merges with the Rule itself as it is applied in subsequent cases. The result has been a developing system of assignments that may be justified in terms of each individual case, but which, on the whole, bears little relation to the rational assignment system represented by the protected contour concept in undiluted form.

7. The Commission is convinced that the problems discussed above compel us to re-examine, immediately, the standards employed in assigning new or changed standard broadcast facilities. We propose to issue a notice of proposed rule making which will propose deeper exploration in many of the areas we have mentioned here. We will seek to determine, among other points, whether many technical portions of the rules continue to be useful tools under present conditions; whether many of the rules have been impaired by their built-in exceptions; whether the body of precedent which has grown up about the practice of granting waivers of certain sections has eroded the sections involved; and, as a result of these determinations and others, to what extent revision of the rules and of our practices would be appropriate. It will be necessary to ask basic questions concerning such matters as the present limits employed to define the normally protected contour of the various classes of stations, and to re-examine the concept of what constitutes a "community" for the purposes of allocating local services. Most significantly, we will need to ask whether, under present-day conditions, our station assignment principles should provide at all for a weighing of engineering standards against subjective non-engineering factors.

8. We feel that the first step necessary to permit an undertaking of the magnitude here involved is a partial halt in our acceptance of standard broadcast applications. This step is essential so that we may avoid compounding present difficulties with a continual flow of new assignments based upon existing, possibly inadequate, standards. On the other hand, we believe that procedural fairness requires that we complete processing those applications currently on file, although we take occasion to note, our consideration of these applications must take into account what we have said here and will reflect our desire to avoid unnecessary aggravation of the problems we have discussed. We believe, moreover, that we may continue to accept for filing certain defined categories of applications which would not





frustrate the ends we seek to achieve by our re-study, or for which there are strong public interest considerations weighing in favor of acceptance. Accordingly, the interim processing criteria we adopt today provide for the continued acceptance of certain applications which would bring service to "white" areas and which would cause no interference to existing stations. We will also accept applications for new Class II-A facilities as specified in §3.22 of the Rules, since, in the Clear Channel Proceeding, we have determined that these new assignments would serve the public interest. Finally, the Commission feels that we must continue to accept most applications for Class IV power increases. Approximately 500 authorizations to increase the power of Class IV stations to one kilowatt have been granted to date, and, since the effectiveness of the general plan allowing Class IV power increases is dependent upon all such stations (except those restricted by international considerations) increasing power, it is essential that we continue to accept applications from those stations who have not yet increased power and which are, in many cases, suffering substantial interference from those Class IV stations which have been granted increases.

9. We also note at this time that the Commission's revision of the rules governing allocation in the FM broadcast service is nearing completion. The Commission suggests that potential applicants for facilities in the crowded standard broadcast band give serious consideration to the greater coverage possibilities provided, both day and night, in the FM band.

10. Since the interim procedures set forth in the appendix hereto relate to matters of practice and procedure before the Commission, proposed rule making in accordance with the provisions of Section 4 of the Administrative Procedure Act is not required. Authority for the adoption of the interim procedures is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

Accordingly, it is ordered, this 10th day of May, 1962, that §1.354 of the Commission's Rules is amended as set forth in the attached appendix effective May 10, 1962.

Released: May 10, 1962

#### DISSENTING STATEMENT OF COMMISSIONER HYDE

I think this is essentially a substantive policy decision and ought to be the subject of a public notice before decision.



**CERTIFICATE OF SERVICE**

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 21<sup>st</sup> day of September, 2011, to the offices of the following:

Jane E. Mago, Esq.  
Jerianne Timmerman, Esq.  
Larry Walke, Esq.  
National Association of Broadcasters  
1771 N Street, N.W.  
Washington, D.C. 20036

  
Traci Maust